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NORTHERN DIST. OF TX
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

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ORIGINAL
TAJUANA BANKS and KIMBERLY B.
MALONEY, Individually, and on Behalf of All
Others Similarly Situated,

Plaintiffs,

v.

INTERNATIONAL BUSINESS MACHINES
CORPRATION,

Defendant.

§ Case No.:

§ 8 - 10 CV 1599 - P

COMPLAINT

Plaintiffs, individually and on behalf of all others similarly situated, by and through their undersigned counsel, for their Complaint against Defendant International Business Machines Corporation (“Defendant” or “IBM”), allege as follows:

JURISDICTION AND VENUE

1. This is an action for monetary damages, declaratory and injunctive relief, and other equitable and ancillary relief under the Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b). This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, and is empowered to issue declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant IBM maintains a call center in within this District, located in Dallas, Texas (the “Call Center”), as well as other offices within this District; IBM is doing business within this District; and the acts of complained of herein occurred in this District.

PARTIES

3. Plaintiffs Tajuana Banks and Kimberly B. Maloney, are former IBM employees who had worked in IBM's Call Center. During the time Plaintiffs were employed by IBM, they were "employee(s)" as defined by 29 U.S.C. § 203(e).

4. Defendant IBM is a New York corporation that maintains offices throughout the United States, including the State of Texas. IBM maintains and operates a Call Center located in Dallas, Texas, as well as other offices within this District. At all times relevant hereto, IBM was an "employer" as defined by 29 U.S.C. § 203(d).

FACTUAL ALLEGATIONS

5. IBM maintains various Call Centers to provide customer service throughout the United States. The Call Centers are staffed by IBM employees whose primary responsibilities are to provide telephonic customer support services to IBM's customers ("Call Center Employees").

6. IBM classifies Call Center Employees as non-exempt from overtime payments under federal law. However, despite the fact that Plaintiffs and all other similarly situated employees and former employees of IBM worked overtime hours, as defined under the FLSA and are, and/or have been, entitled to premium compensation at one and one-half times the regular hourly rate ("Overtime Compensation") for any hours worked in excess of forty (40) hours per week, IBM has willfully refused to pay Plaintiffs and others similarly situated the required overtime compensation for the overtime hours worked.

7. Instead, IBM's policy has been, and is, to pay Call Center Employees, including Plaintiffs, only for their scheduled hours, which is normally an eight hour shift. Plaintiffs, and other Call Center Employees, however, are required to arrive at work 10-15 minutes prior to the

start of their regular shift to perform tasks necessary for their positions, such as fully booting computers and ensuring that all relevant applications are loaded. In addition, Call Center Employees are required to complete all customer calls before they can leave work, even if their shift has ended, and are required to work during meal and rest breaks if necessary, to complete customer calls. As a consequence, Call Center Employees routinely work in excess of forty (40) hours per week without receiving Overtime Compensation.

8. IBM has intentionally, willfully and improperly failed to pay Overtime Compensation to Plaintiffs and all other similarly situated Call Center Employees for the overtime hours they worked, and has failed to keep time records as required by law.

9. Defendant IBM's practices violate the FLSA as plead herein. Plaintiffs seek injunctive and declaratory relief, overtime compensation for all overtime work required, suffered, or permitted by IBM, liquidated and/or other damages and penalties as permitted by applicable law, interest, and attorneys' fees and costs.

COLLECTIVE ACTION ALLEGATIONS

10. Plaintiffs bring this Claim for Relief for violation of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all Nationwide FLSA Collective Plaintiffs.

11. Plaintiffs and Nationwide FLSA Collective Plaintiffs are similarly situated in that they have substantially similar job requirements and pay provisions, and are subject to IBM's common practice, policy, or plan of unlawfully refusing to pay them Overtime Compensation in violation of the FLSA.

12. This Claim for Relief for violations of the FLSA may be brought and maintained as an "opt- in" collective action pursuant to § 16(b) of FLSA, 29 U.S.C. § 216(b), since the

claims of the Plaintiffs are similar to the claims of the members of the Nationwide FLSA Collective Plaintiffs.

13. The names and addresses of the Nationwide FLSA Collective Plaintiffs are available from Defendant IBM, and notice should be provided to the Nationwide FLSA Collective Plaintiffs via first class mail to the last address known to their employer as soon as possible.

FIRST CLAIM FOR RELIEF

**(Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*,
Brought by Named Plaintiffs on Behalf of
Themselves and the Nationwide FLSA Collective Plaintiffs)**

14. Plaintiffs, on behalf of themselves and the Nationwide FLSA Collective Plaintiffs, reallege and incorporate by reference the above paragraphs as if they were full set forth herein.

15. At all relevant times, IBM has been, and continues to be, an “employer” engaged in interstate “commerce” and/or in the production of “goods” for “commerce,” within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, IBM has employed, and continues to employ, “employee[s],” including Plaintiffs, and each of the collective Nationwide FLSA Collective Plaintiffs. At all relevant times, IBM has had gross operating revenues in excess of \$500,000.

16. Attached hereto are consents to sue signed by the Named Plaintiffs in this action pursuant to § 16(b) of the FLSA, 29 U.S.C. §§ 216(b) and 256. It is likely that other individuals will sign consent forms and join as plaintiffs on this claim in the future.

17. The FLSA requires each covered employer, such as Defendant IBM, to compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week.

18. The Nationwide FLSA Collective Plaintiffs are entitled to be paid Overtime Compensation for all overtime hours worked.

19. At all relevant times, IBM, pursuant to its policies and practices, failed and refused to pay overtime premiums to the Nationwide FLSA Collective Plaintiffs for their hours worked in excess of forty hours per week.

20. By failing to compensate Plaintiffs and the Nationwide FLSA Collective Plaintiffs at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, IBM has violated, and continues to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. § 207(a)(1) and § 215(a).

21. By failing to record, report, and/or preserve records of hours worked by Plaintiffs and the Nationwide FLSA Collective Plaintiffs, IBM has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. § 211(c) and § 215(a).

22. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

23. Plaintiffs, on behalf of herself and Nationwide FLSA Collective Plaintiffs, seek recovery of their attorneys' fees and costs of action to be paid by IBM, as provided by the FLSA, 29 U.S.C. § 216(b).

24. Plaintiffs, on behalf of themselves and Nationwide FLSA Collective Plaintiffs, seek damages in the amount of their respective unpaid Overtime Compensation, liquidated damages as provided by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Nationwide FLSA Collective Plaintiffs, pray for relief as follows:

- A. Designation of this action as a collective action on behalf of the Plaintiffs and the Nationwide FLSA Collective Plaintiffs (asserting FLSA claims) and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Opt-In Class, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);
- B. Certification of this action as a class action on behalf of the proposed Class;
- C. Designation of Plaintiffs as Representatives of the Class;
- D. A declaration that the practices complained of herein violate ERISA § 209(a), 29 U.S.C. § 1129(a);
- H. An order requiring that Defendant remedy its breaches of fiduciary duty by crediting Plaintiffs and the Class with Eligible Compensation and Pensionable Pay for all of their past, present, and future uncompensated work;
- I. Attorneys' fees and costs of suit; and
- J. Such other injunctive and equitable relief as the Court may deem necessary, just, and proper.

Dated: August 16, 2010

Respectfully submitted,

By: 

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Attorneys for Plaintiffs

CONSENT TO JOIN COLLECTIVE CLASS ACTION

By signing below, I state that I have been employed by International Business Machine ("IBM"), or one of its subsidiaries or affiliates as a Call Center Employee, or other similarly titled position within the past three (3) years and that I worked more than forty (40) hours in at least one week and was not paid for all the time I worked, including all preliminary and postliminary work activities. I hereby consent to join this lawsuit for violations of the Fair Labor Standard Act, 29 U.S.C. § 201, *et seq.*

I hereby designate the Egleston Law Firm, Rigrodksy & Long, P.A. and Law Office of Roger F. Claxton ("Plaintiffs' Counsel") and other attorneys with whom they may associate to represent me for all purposes of this action.

I also designate the Class Representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

8/10/10
Date

Tajuana Banks
Signature

Tajuana Banks
Print Name

CONSENT TO JOIN COLLECTIVE CLASS ACTION

By signing below, I state that I have been employed by International Business Machine ("IBM"), or one of its subsidiaries or affiliates as a Call Center Employee, or other similarly titled position within the past three (3) years and that I worked more than forty (40) hours in at least one week and was not paid for all the time I worked, including all preliminary and postliminary work activities. I hereby consent to join this lawsuit for violations of the Fair Labor Standard Act, 29 U.S.C. § 201, *et seq.*

I hereby designate the Egleston Law Firm, Rigrodskay & Long, P.A. and Law Office of Roger F. Claxton ("Plaintiffs' Counsel") and other attorneys with whom they may associate to represent me for all purposes of this action.

I also designate the Class Representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

8-6-10
Date

Kimberly B. Maloney
Signature
Kimberly B. Maloney
Print Name

CIVIL COVER SHEET

PRIVILEGED
The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Tijuana Banks and Kimberly B. Maloney

DEFENDANTS

International Business Machines Corporation

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(c) Attorney's (Firm Name, Address, and Telephone Number)

Roger F. Claxton

10000 N. Central Expressway, Suite 1100, Dallas, TX
75231-3141-969-9629

Address (If Known)

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXASRECEIVED
BY
AUG 17 2010NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

3-10 CV 1599 - P

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

 1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF DEF PTF DEF
 1 Citizen of This State 1 Incorporated or Principal Place of Business In This State 4 4Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY	CIVIL RIGHTS <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PRISONER PETITIONS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	LABOR <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	SOCIAL SECURITY <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

FLSA 29 USC sec 216(b)

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes NoVIII. RELATED CASE(S) (See instructions)
PENDING OR CLOSED:

JUDGE _____ DOCKET NUMBER _____

DATE

8-17-10

SIGNATURE OF ATTORNEY OF RECORD

Roger Claxton

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____